

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

RECEIVED

JUL 19 P 1:19

SHANE GALLAGHER,

Plaintiff,

v.

GENEVA COUNTY COMMISSION,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

CIVIL ACTION NO.: 1:07CV 660 - wha

**GENEVA COUNTY COMMISSION'S MOTION TO DISMISS**

COMES NOW the Geneva County Commission, Defendant in the above-styled cause, and submits this Motion to Dismiss pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure and state as follows:

I. The Plaintiff's Federal Law Claims are due to be dismissed.

A. Geneva County, Alabama is entitled to have the Plaintiff's 42 U.S.C. § 1983 claims against it dismissed.

1. Forty-two U.S.C. § 1983 is not a source of substantive rights; therefore, "violation" of this section fails to state a claim.


2. The Plaintiff has failed to allege that any policy or custom of Geneva County was the moving force behind the alleged violation of his rights.

B. Geneva County cannot be held vicariously liable for the actions of Sheriff Ward because Sheriff Ward is not a Geneva County employee for purposes of *respondeat superior*.

II. All claims against fictitious parties are due to be stricken

III. The Geneva County Commission is immune from punitive damages.

Respectfully submitted this 19<sup>th</sup> day of July, 2007.

  
C. RICHARD HILL, JR. (HILL 045)  
Attorney for Defendant  
Geneva County Commission

OF COUNSEL:

Webb & Eley, P.C.  
7475 Halcyon Pointe Drive (36117)  
Post Office Box 240909  
Montgomery, Alabama 36124-0909  
(334) 262-1850 - Telephone  
(334) 262-1772 - Fax  
[rhill@webbeley.com](mailto:rhill@webbeley.com)

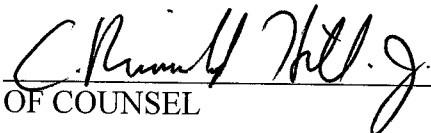
**CERTIFICATE OF SERVICE**

I hereby certify that on this the 19<sup>th</sup> day of July, 2007, I filed the foregoing with the Clerk of the Court and mailed, postage prepaid, a copy of the same to the following:

J. E. Sawyer, Jr., Esquire  
203 Edwards Street  
Enterprise, Alabama 36330

and that I have served the foregoing Motion to Dismiss by sending a copy of the same via Federal Express, fees paid, upon:

Honorable Gale Laye  
Geneva County Circuit Court Clerk  
200 N. Commerce Street  
Geneva, Alabama 36340

  
OF COUNSEL